IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9935 of 2001
With
SPECIAL CIVIL APPLICATION No. 9936 of 2001

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER SHREE & 1 - Petitioner(s)
Versus
RAJENDRAKUMAR PUNAMCHAND JOSHI - Respondent(s)

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Appearance :
MR RA MISHRA for Petitioner(s) : 1 - 2.
MR IS SUPEHIA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 04/07/2007

ORAL JUDGMENT

1. Mr.R.A. Mishra, learned counsel for the petitioners and Mr.I.S. Suphehis, learned counsel for the respondent.
2. These two petitions are filed against independent awards made by the Labour Court in favour of each of the respondent.

3. Each of the respondent was appointed as daily wager in the department of the Panchayat which was known as Irrigation Department, after some time w.e.f. 31/1/1989, their services were discontinued. Each of the respondent got the matter referred to the Labour Court. The parties filed their claim and written statements before the Labour Court. The workmen submitted that their termination amounted to retrenchment, while the present petitioner establishment submitted that the irrigation department not being an industry, the respondents could not be taken to be workmen and as such, the reference was incompetent. The learned Labour Court, after giving its due consideration to the facts of the case, held that the department would be an industry within the mischief / definition of sec.2-J of the Industrial Disputes Act, it accordingly, allowed the Reference and directed reinstatement with full back wages.
4. Mr.Mishra, learned counsel for the petitioners focused his attention to the question that the Irrigation Department not being an industry, the respondents could not be considered to be workman and no orders could be made in their favour.
5. Mr.Supehia, learned counsel for the respondent, placing

his strong reliance upon a judgement of a Full Bench of this Court in case of Gujarat Forest Producers Gathers & Forest Workers Union Vs. State of Gujarat, 2004 (2) G.L.H. 302 submitted that the Irrigation Department would be an industry and under the circumstances, the Court below was justified in holding the respondents to be workmen.

6. After going through the abovereferred judgement, I find no difficulty in holding that the respondents could safely be treated as workmen. Once they are held to be workmen and satisfy the other conditions, then, without a legal notice or wages in lieu of the notice, they could not be terminated from services, and, in case, they are terminated contrary to sec.25-F of the Industrial Disputes Act, such termination would amount to illegal retrenchment.

7. The Court below was absolutely justified in granting the Reference in favour of the workmen. Both the petitions are dismissed with no orders as to costs. Rule is discharged and Interim relief, if any, is vacated, in each of the petition.

(R.S. GARG, J.)

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